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19 REED, and COASTAL PROTECTION
RANGERS, INC.
20

21 **UNITED STATES DISTRICT COURT**

22 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

23 CORY SPENCER, an individual;
24 DIANA MILENA REED, an
individual; and COASTAL
25 PROTECTION RANGERS, INC., a
26 California non-profit public benefit
corporation,

27
28 Plaintiffs,

CASE NO. 2:16-cv-02129-SJO (RAOx)

**PLAINTIFFS' REPLY IN SUPPORT
OF THEIR MOTION TO RE-TAX
COSTS**

1 v.

2 LUNADA BAY BOYS; THE
3 INDIVIDUAL MEMBERS OF THE
4 LUNADA BAY BOYS, including but
5 not limited to SANG LEE, BRANT
6 BLAKEMAN, ALAN JOHNSTON
7 AKA JALIAN JOHNSTON,
8 MICHAEL RAE PAPAYANS,
9 ANGELO FERRARA, FRANK
10 FERRARA, CHARLIE FERRARA,
11 and N. F.; CITY OF PALOS VERDES
12 ESTATES; CHIEF OF POLICE JEFF
13 KEPLEY, in his representative
14 capacity; and DOES 1-10,

15 Defendants.

Judge: Honorable S. James Otero
Date: June 4, 2018
Time: 10:00 a.m.
Ctrm.: 10C

Complaint Filed: March 29, 2016

1 **I. INTRODUCTION**

2 Like many civil rights proponents in our country's history, Plaintiffs have
3 faced significant opposition by way of threats and belittlement. But, like other civil
4 rights advocates before them, Plaintiffs press forward with their legal theories in this
5 same tradition and in the quest for equality.

6 Here, Los Angeles County has approximately 75 miles of coastline and Palos
7 Verdes Estates' ("the City") coastline – in particular Lunada Bay – is among the
8 most beautiful. (Dkt. No. 301, PAMF 107.) The record is replete with evidence
9 demonstrating pervasive intimidation and violence at Lunada Bay designed to keep
10 outsiders away. (Dkt. No. 545, at 15 ["Plaintiffs have submitted tomes of evidence
11 regarding the history of localism in Lunada Bay, various incidents that have been
12 reported and publicized over the decades, and the response or lack of response from
13 The City to these incidents."].) And it cannot be disputed that, of Los Angeles
14 County's 88 incorporated cities, the City with a population of about 14,000, is by a
15 large margin among the least densely populated and wealthiest, but also among the
16 least ethnically diverse.¹ Thus, the non-resident visitors (outsiders) for whom
17 Plaintiffs continue to seek coastal access in State Court are people of color, women,
18 and people of lower economic means.

19 Plaintiffs ask this Court to exercise its discretion to decline taxation of more
20 than \$23,000 in costs against them as a non-prevailing party. Without any
21 expectation of great personal gain,² Plaintiffs push to make a public beach available
22

23 ¹ [http://www.lacounty.gov/government/geography-](http://www.lacounty.gov/government/geography-statistics/statistics/#1481134819146-99b6b31e-ee24)
24 [statistics/statistics/#1481134819146-99b6b31e-ee24;](http://ceo.lacounty.gov/forms/09-10%20Cities%20Alpha.pdf)
25 [http://ceo.lacounty.gov/forms/09-10%20Cities%20Alpha.pdf;](http://maps.latimes.com/neighborhoods/neighborhood/palos-verdes-estates/)
<http://maps.latimes.com/neighborhoods/neighborhood/palos-verdes-estates/>

26 ² The City's reference to class wide damages calculations is wildly misleading,
27 when Plaintiffs' expert valued beach trips at \$50 to \$80 per person per visit. This is
28 the same amount Plaintiffs would have received.

1 to non-resident visitors. The Court's use of its discretion to decline taxation of costs
 2 is justified because: (1) Plaintiffs assert important civil rights claims; (2) the right to
 3 access public beaches is of great importance and concern to the State, the media, and
 4 the greater Los Angeles community; (3) this dispute is not over³; (4) Plaintiffs'
 5 lawsuit has served as a catalyst to change; and (5) the City's motion to pay costs in
 6 an ongoing civil rights dispute is intended to quiet Plaintiffs and will scare others
 7 from coming forward.

8 Finally, the City's procedural arguments should be disregarded. The local
 9 rules do not restrict the arguments that can be made in a Motion to Retax Costs and
 10 Plaintiffs met and conferred with the City, even though it was not required.

11 **II. ARGUMENT**

12 **A. Coastal access is an important civil right, which Plaintiffs partially** 13 **vindicated.**

14 The City misunderstands or misconstrues Plaintiffs' arguments regarding the
 15 importance of this civil rights litigation. In this motion, Plaintiffs have described the
 16 historical racial discrimination in coastal access, and contend that Defendants'
 17 actions in this case are a continuation of that type of discrimination—that the City's
 18 public beaches belong to privileged locals only. Plaintiffs filed this case to open an
 19 entire beach, not just to vindicate a personal right. Defendants have not rebutted the
 20 authority that coastal access for non-locals is an important civil right.

21 Moreover, as a result of this civil rights lawsuit, Plaintiffs effected positive
 22 change at Lunada Bay. By filing their lawsuit, Plaintiffs sought injunctive relief at
 23 Lunada Bay that included removal of the illegal Rock Fort. (*See* Dkt. No. 39-2.) As
 24 explained in Plaintiffs' opening memorandum, this litigation forced the City to

25
 26 ³ The Coastal Act Claim against the City remains to be decided in state court
 27 because the City requested, and this Court ordered, that this claim be heard in state
 28 court.

1 remove the Rock Fort. (Dkt. No. 581-1, at 9-10.) Moreover, after the lawsuit was
 2 filed, the City took other actions to address localism at Lunada Bay. (*Id.*, at 10-11.)⁴

3 **B. A cost award to the City is premature because the Coastal Act**
 4 **Claim remains to be decided.**

5 The City wrongly argues that “[t]he outcome of the state-court action has no
 6 bearing on an award of costs in this action” and that there “is no authority for the
 7 ‘wait and see’ approach to awarding costs that Plaintiff mistakenly advocate.” (Dkt.
 8 No. 582, at 4:20-22, 5:3-5). But in *Callicrate v. Farmland Industries, Inc.*, the
 9 appellate court reversed the district court and held that the cost award should be
 10 vacated because the controversy was still “in active litigation in the state court.”
 11 139 F.3d 1336, 1342 (10th Cir. 1998). It further held that “[s]ince the merits of the
 12 controversy between Callicrate and Co–Op (Grinnell) is undecided, the
 13 determination below that Co–Op should recover costs incurred respecting the merits
 14 of the feed supplement controversy is speculative and premature.” *Id.*

15 Although *Callicrate* was decided under 28 U.S.C. § 1919, which addresses
 16 “just costs” after a dismissal for lack of jurisdiction, it is instructive for this case
 17 where the merits of the dispute are similarly “undecided.” As noted, Plaintiffs’
 18 Coastal Act Claim (initiated by Plaintiffs in this Court) remains to be litigated in
 19 State Court after this Court abstained from hearing it under *Burford v. Sun Oil*
 20 *Comp.*, 319 U.S. 315 (1943). Dismissal for lack of jurisdiction is similar to an
 21 abstention under *Burford* insofar as both involve dismissal without disposition on
 22 the merits to allow resolution in state court. Therefore, as in *Callicrate*, an award of
 23

24 ⁴ The City’ numerous voluntary actions belie their contention that they easily
 25 defeated Plaintiffs’ claims. Indeed, their actions suggest they are concerned with
 26 potential liability on the Coastal Act Claim. In some cases, a defendant’s voluntary
 27 actions to moot a dispute can result in taxes being assessed ***against the defendant***.
 28 *See, e.g., Black Hills Alliance v. Regional Forester*, 526 F.Supp. 257 (D. S.D. 1981).

1 costs to the City at this juncture would be speculative and premature. *See also Otay*
 2 *Land Co. v. United Enterprises Ltd.*, 672 F.3d 1152, 1160 (9th Cir. 2012) (“the
 3 existence of parallel state litigation may factor into a district court’s determination
 4 of just costs” under § 1919); *Plata v. Darbun Enterprises, Inc.*, 2010 WL 3184298,
 5 at *5 (S.D. Cal. August 11, 2010) (“the Court finds these costs should be determined
 6 at the end of the new action.”).

7 Although the City prevailed on the Equal Protection Claim, it is likely to lose
 8 on the Coastal Act claim, in which case Plaintiffs should be deemed the prevailing
 9 party overall. This Court should follow *Callicrate* and its progeny and defer taxing
 10 of costs to the State Court.

11 **C. Defendants’ procedural arguments fail as a matter of law.**

12 **1. *The local rules do not restrict the arguments that can be made***
 13 ***in a Motion to Retax Costs.***

14 The City incorrectly posits that Plaintiffs’ arguments and evidence in its
 15 Motion to Retax must have been previously raised in their Objections to the
 16 Application to Tax Costs. But this suggestion was recently rejected by this Court in
 17 *PSM Holding Corp. v. National Farm Financial Corp.*, where the district court held:
 18 “the Local Rules do not preclude the court from considering arguments raised by the
 19 parties [in a Motion to Retax] regarding the record.” 2015 WL 11251950, at *3, n.
 20 21 (C.D. Cal. July 14, 2015) (vacated on other grounds at *PSM Holding Corp. v.*
 21 *National Farm Financial Corp.*, 884 F.3d 812 (9th Cir. 2018)). The Court in *PSM*
 22 *Holding Corp.* explained that, “while the court limits its review of the clerk’s
 23 determination to defendants’ application to tax costs... it will consider the
 24 arguments raised in the parties’ briefs on the motion to retax costs.” (*Id.*)
 25 Moreover, it makes little sense to require litigants to present all legal arguments and
 26 supporting facts (particularly as to equitable legal arguments) to the Clerk, who has
 27 no authority to rule on such arguments.
 28

1 The City' sole authority is not to the contrary. In *Memory Lane, Inc. v.*
 2 *Classmates International, Inc.*, a prevailing defendant attempted to support the costs
 3 identified in its Application to Tax Costs with new evidence in its opposition to the
 4 Motion to Retax. 2014 WL 12617383, at *3 (C.D. Cal. July 25, 2014). Although
 5 the Court referenced the limitation of the review under L.R. 54-8, it then proceeded
 6 to substantively analyze the purported new evidence. *Id.*

7 Regardless, Plaintiffs' arguments in this Motion to Retax were presented in
 8 Plaintiffs' Objection to Defendants' Application to the Clerk to Tax Costs
 9 ("Objections"). (Dkt. No. 557, at 1:23-24, 2:3-4, and 2:18-19.)

10 **2. *Meeting and conferring is not necessary in a Motion to Retax,***
 11 ***but Plaintiffs did so in good faith regardless.***

12 Oddly, the City both concedes that Plaintiffs met and conferred regarding the
 13 substance of this motion and also argues that Plaintiffs failed to meet and confer. In
 14 any event, the meet-and-confer requirement "seems inapplicable where, as here, a
 15 party only has seven days file the motion in the first place[]." *Mulligan v. Yang*,
 16 2017 WL 826909, at *1 (C.D. Cal. March 2, 2017). And in any event, the parties
 17 discussed the substance of this motion on two separate occasions. (Dkt. No. 582, at
 18 14:27-15:2; Dkt. No. 582-1, at ¶ 3.)

19 **III. CONCLUSION**

20 Plaintiffs ask this Court to exercise its discretion and decline the City's cost
 21 award in light of the important – and unresolved – civil rights issues here.

22 DATED: May 21, 2018

HANSON BRIDGETT LLP

23
 24
 25 By: /s/ Russell C. Petersen
 26 RUSSELL C. PETERSEN
 27 Attorney for Plaintiffs
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